

THE COMPLAINT PROCESS

The enforcement process consists of five stages; however, many complaints are resolved prior to reaching the fifth stage.

Step 1: Complaint Intake and Initial Evaluation

All complaints are received by the VIDC Standards of Practice Enforcement Attorney for evaluation. The complaint form may be downloaded from the VIDC website at www.indigentdefense.virginia.gov or a copy from your local court.

Next, the Standards of Practice Enforcement Attorney (SOPEA) will determine if the complaint is "qualified." A complaint shall be deemed "qualified" when it satisfactorily complies with all the filing requirements and if true, would rise to the level of a violation of the Standards of Practice. In order to be deemed "qualified," a complaint must:

- *be submitted in writing on the correct form AND*
- *not be anonymous AND*
- *be filed within twelve months of the conclusion of representation AND*
- *reference a specific case AND*
- *involve a court-appointed attorney or public defender in an indigent defense case AND*
- *allege violation(s) of specific Standard(s) of Practice AND*
- *be inherently credible.*

If the Standards of Practice Enforcement Attorney finds the complaint does not meet the requirements as set forth above, the complaint will be dismissed.

There can be no appeal of a dismissal based upon a finding of "unqualified." However, the complainant may initiate a new revised complaint if the time limit (filing within twelve months of the conclusion of representation) has not elapsed. If the complaint has been dismissed only because the complaint was not written on the correct form, the complainant may amend the complaint within three months or prior to the original twelve month filing period, whichever is later.

If the SOPEA finds the complaint meets the requirements and is "qualified," the complaint shall then proceed to the investigation stage.

The Executive Director, or his designee, may authorize the investigation into an allegation of misconduct by a court appointed attorney or public defender in the absence of a filed complaint upon the receipt of information alleging a violation of the Standards of Practice. Such information will be forwarded by the Executive Director or his designee to the SOPEA. The SOPEA will investigate the allegation and make an independent determination as to whether the complaint is "qualified".

Step 2: Investigation

The SOPEA shall thoroughly investigate every qualified complaint and compile a written report. The SOPEA will contact a complainant if more information is needed. The process may take several months to complete, depending on the nature of the complaint and the number of

complaints currently under investigation. Every complainant shall be notified in writing as to the outcome of their complaint. The SOPEA shall provide a copy of the complaint to the attorney against whom the complaint is filed ("respondent attorney") and request a written response within thirty days.

The investigative report shall contain, at a minimum, a copy of the complaint filed, the respondent attorney's response, if any, and any supporting documentation or other relevant information obtained by the SOPEA. A copy of the investigative report will be sent to the Informal Resolution Panel.

Step 3: Informal Resolution

The Informal Resolution Panel will hear a "qualified" complaint and evaluate the SOPEA's investigative report. The Informal Resolution Panel will be a three-member panel consisting of the VIDC Executive Director, the VIDC Deputy Director, and the VIDC Director of Training and Attorney Certification, or a designated alternate.

Upon receipt of the investigative report, the Informal Resolution Panel will schedule, within thirty days or as soon thereafter as practical, an informal hearing with the respondent attorney. During the informal hearing, any relevant information may be considered. The SOPEA will be available either in person or via telephone conference, to answer questions pertaining to his/her report and investigation. The respondent attorney may choose to appear before the Panel either in person or via telephone conference.

- *In the event of multiple complaints against the same attorney, the Panel may combine all complaints into one hearing. Each complaint, however, will be addressed separately.*
- *The respondent attorney has a duty to cooperate with the Panel and may have counsel present during the Panel hearing.*
- *Within fifteen days of the hearing, the Panel will issue written findings. If the Panel does not find a violation of the Standards of Practice, the Panel will dismiss the complaint, and a letter of explanation will be sent to the complainant. In the event a violation of the Standards of Practice is found, the Panel will send a letter to the respondent attorney with proposed corrective measures ("Recommendation Letter").*

If the respondent attorney agrees to the proposed recommendation, he/she shall endorse the letter, and send it back to the Panel, at which point the endorsed Recommendation Letter becomes a Resolution Agreement.

The SOPEA will ensure that any corrective measures agreed to by endorsement of the Resolution Agreement are timely completed. If the respondent attorney fails to fully comply with the terms of the Resolution Agreement, the attorney will face additional sanctions, up to and including removal from the list.

If the respondent attorney disagrees with the proposed recommendation offered by the Panel, the matter will proceed to a Hearing.

Step 4: Hearing

The Hearing Panel will consist of three Virginia State Bar members chosen from a standing committee of volunteer attorneys serving overlapping terms. The Panel will meet quarterly, as needed and all Hearings will be recorded.

The SOPEA shall be available to answer questions pertaining to his/her report and investigation in person or via telephone conference.

Up until forty-eight hours before the hearing, the respondent attorney may opt to accept the Informal Resolution Panel's recommendation rather than proceed with the Hearing.

Prior to the Hearing, the Panel members shall review the Investigation Report, the attorney's Response Letter, Findings, and the Informal Resolution Panel's Recommendation Letter with its determination of the respondent attorney's alleged violations of the Standards of Practice. Any additional relevant information may be presented to the Panel.

The Hearing Panel may:

1. *dismiss the complaint as unfounded,*
2. *dismiss the complaint because the complained actions do not rise to the level of specific violations,*
3. *find that a violation has occurred and issue remedial sanctions, or*
4. *find that a violation has occurred and remove the attorney from the court appointed list*

The SOPEA shall monitor the respondent attorney's compliance with any remedial sanctions issued by the Hearing Panel. If the respondent attorney fails to timely complete imposed sanctions, the respondent attorney may be suspended or removed from the court appointed list.

Step 5: Appeal to the Virginia Indigent Defense Commission

In the event that the Hearing Panel finds a violation and imposes a remedial sanction or directs removal from the court appointed list, the respondent attorney may appeal only the remedial sanction or removal from the list to a three-person panel of VIDC members. The appeal shall be in writing only. The Commission Panel may review any written materials in support of appellant attorney's argument concerning appropriateness of sanction(s). The Commission shall issue a written decision which shall be final.

Virginia Indigent Defense Commission



Standards of Practice Complaint Procedure Pamphlet

Virginia Indigent Defense Commission
1604 Santa Rosa Road, Suite 200
Richmond, Virginia 23229
(804) 662-7249